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In the

Supreme Court of the United States

OCTOBER TERM, 1961 2

REPUBLIC NATIONAL BANK OF DALLAS,
Appellant,

v.

C. H. LANGDEAU, RECEIVER FOR
I. C. T. INSURANCE COMPANY,
Appellee.

Appeal from the Supreme Court of Texas

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL

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No. 969

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Republic National Bank of Dallas, appellant, files this its brief in opposition to the motion to dismiss appeal filed herein by appellee.

ARGUMENT

The principal basis of apppellee's motion is that the Texas decree appealed from is not final. That is not the real question. This case is not complete; no one disagrees with

that. Nevertheless this Court has reviewed a number of cases before they were complete. It has done this in the face of a statutory direction that limits Supreme Court review to "final judgments or decrees." The real question is whether this appeal meets the criteria which allow review before a case is complete.

Although many cases have discussed what these criteria are, none has provided a clear-cut list of principles to be uesd. Appellant feels, however, that some of these principles are revealed by contrasting two types of cases in which decisions for and against review have long been consistent. One type is exemplified in *Clark v. Williard, 292 U. S. 112 (1934)*, which allows review of a state judgment even though there remains a lengthy receivership before the state proceedings actually terminate. The other is demonstrated by *Montgomery Building and Construction Trades Council v. Ledbetter Erection Company, 344 U. S. 178 (1952)*, where this Court refused to review a temporary injunction. This Court has consistently granted review in "receivership" cases similar to *Clark v. Williard*. It has consistently refused to review "temporary injunction" cases similar to the *Montgomery* case.

Several differences between the receivership and the temporary injunction situations point out why this is so. Review in a receivership situation usually precedes an extended judicial proceeding, and to postpone a decision until the proceeding is complete might induce error which would be time consuming and costly even if later corrected. On the other hand a temporary injunction usually contemplates

but one additional proceeding, and to put off review until after the second hearing does not allow the same opportunity for compounding error.

Review in the receivership situation is usually requested after a complete trial of all the issues involved. The issues up for review will have been decided after full opportunity for preparation and hearing. By contrast, a temporary injunction is usually granted quickly, before the parties have had a chance to prepare the case thoroughly. It is an order granted for the time being, and in anticipation of a more thorough hearing on the same issues later. Should the later hearing reveal additional facts or issues, it might change the situation enough to create entirely new problems. To review the first hearing leaves the Court open for a review of the *same* question later.

Finally, there is a difference in the purpose of the two proceedings. The receivership-type is intended as a guide by which a later proceeding is to be directed. If it is erroneously decided at the beginning and there is no opportunity to protest, the error will be compounded in the proceeding which follows. The temporary injunction, however, is designed to take care of an emergency and to be superseded once there is a chance for a full hearing. An aggrieved party does not have to appeal to protest an error; he need only wait. The receivership situation contemplates carrying out the decisions reached. The temporary injunction leads only to relitigation.

With these distinctions in mind, we submit that this case is more akin to the receivership situation than to the tem-

porary injunction. The decision of the Texas Supreme Court precedes a long and difficult litigation. Trial on the merits, as shown by appellee's petition, involves an action for $15,000,000 in damages against appellant and 143 other defendants on allegations that each was a party to a common conspiracy with each of the others to defraud the I.C.T. Insurance Company its creditors, stockholders, claimants and the public; that such conspiracy was conceived in May of 1950 and continued until February of 1957. If the error, sought to be reviewed herein, is allowed to stand, appellant will be required to endure this fantastic, multifarious, complex and lengthy litigation at a place two hundred miles from the place where its witnesses reside and its records are located, in violation of its valuable right to be sued where its place of business is located, as provided by the Congress of the United States. The question for review here is one that has already been thoroughly litigated and finally determined insofar as the Texas courts are concerned. The facts relating to venue are undisputed. Nothing to be developed at a trial on the merits can or will shed any further light on the venue question. Each of the parties has been accorded the fullest opportunity to present its case on such question before the courts of Texas. Finally, the proceeding to determine venue is one intended to guide the court in later proceedings. No relitigation is proposed; if there is error here and the impending trial is guided by that error, appellant will have been effectively denied a right granted by Congress to be sued in its home county.

Appellee also implies that to grant review now would be to expand this Court's jurisdiction without Congressional

authorization. That is not true. The Court granted review in *Clark v. Williard, supra*, without that sort of difficulty. The Court would not be extending its jurisdiction; it would simply be giving a sensible interpretation to the word "final" in 28 U. S. C. §1257.

Appellee suggests that if appellant is forced to trial erroneously outside its home county and prevails, it will probably acquiesce in the venue ruling of the Texas Supreme Court. Even should that be so, it is no reason to countenance an erroneous denial of appellant's federal right by the Texas courts. This is an important question, one that is of vital interest to national banks everywhere. Appellant suggests that this Court should review the question in clear and understandable language, so that courts may no longer disregard the plain wording of this Congressional act upon such false reasoning as was given below and as has been given in the erroneous decisions from other states relied upon by appellee.

CONCLUSION

For the reasons stated, appellant Republic National Bank of Dallas requests that appellee's motion to dismiss this appeal be denied and the case be heard on briefs and oral argument.

Respectfully submitted,

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PROOF OF SERVICE

I, Neth L. Leachman, attorney for Republic National Bank of Dallas, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of June, 1961, I served copies of the foregoing brief in opposition to appellee's motion to dismiss appeal on appellee thereto, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to the following attorneys of record for appellee, as follows:

To Cecil C. Rotsch, Esq.,
P. O. Box 13,
Austin, Texas.

To Quentin Keith, Esq.,
Keith, Mehaffy, McNicholas & Weber,
Kaufman Trust Building,
Beaumont, Texas.

To W. E. Cureton, Esq.,
Cureton & Lanham,
401 Professional Building,
Waco, Texas.

None of the persons on whom service is to be made resides five hundred miles or more from me.

NETH L. LEACHMAN,
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